In the Supreme Court of the United States

October Term, 1943

No. 440

ROSE M. O'HARA, Petitioner

vs.

MAURICE J. MURPHY, Special Administrator, et al.
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF

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The petitioner, Rose M. O'Hara, prays for a writ of certiorari to review the final judgment of the Circuit Court of Appeals, First Circuit, entered on July 9, 1943, confirming the Judgment of the United States District Court for the District of Massachusetts against the petitioner and in favor of the respondent.

STATEMENT OF MATTER INVOLVED

1. This case was brought under the Federal Interpleader Act (43 Stat. 976; 28 U. S. C. A. Section 41 (26)) and involves the ownership of two life insurance policies which became the sole property of Mrs. O'Hara, widow of the late

Walter E. O'Hara, on May 2, 1939. The matter was referred to a Master and he made the following finding:

> "I rule on the facts found by me, as hereinbefore recited, that when O'Hara" (meaning Walter E. O'Hara) "delivered the policies to Rose M. O'Hara, then Rose G. MacLaughlin, that evening in May 1939, title thereto was transferred and vested in the latter.
>
> ". . . I further rule on the facts found by me as hereinbefore recited, that Mrs. O'Hara did nothing which divested her of her title to the policies prior to September 21, 1940."

The Master also found that on September 21, 1940, Rose M. O'Hara *delivered* the policies to Messrs. Kilbourne and Broadbent, agents of the late Walter E. O'Hara, and that in doing so she thereby gave up all her vested interest therein.

These findings have been affirmed by the District Court and also later by the Circuit Court of Appeals for the First Circuit. Thus it is judicially established that the two said insurance policies became and were the sole property of Mrs. Rose M. O'Hara on May 2, 1939 and that said policies remained her sole property up to and inclusive of the day of September 21, 1940; also that she lost her title on Sept. 21, 1940.

Both said policies contained the following endorsement:

> "If this policy shall mature as a death claim, the proceeds shall be payable to my intended wife, Rose G. McLaughlin, if living, otherwise to my executors or administrators." (Exhibit 3)

Subsequent to the marriage of Mr. and Mrs. O'Hara which occurred on June 14, 1940, both policies were endorsed again with a change of name in the beneficiary clause so that the married name of Rose M. O'Hara, wife of Walter E. O'Hara, was substituted for the name of Rose G. MacLaughlin.

The respondent, Maurice J. Murphy, Special Administrator, filed no objection to the Master's findings and to the District Court's affirmation thereof that the policies became the sole property of Mrs. O'Hara (then Rose G. MacLaughlin) and that title thereto was vested in the latter. The District Court held that Maurice J. Murphy, respondent, assented thereto.

The Master then proceeded to make another finding which took the said policies away from Mrs. O'Hara. The finding is as follows:

> "I further find that the policies were given up pursuant to arrangements worked out between counsel for the return of such property as each possessed and was claimed by the other in connection with which it was agreed that the policies claimed by O'Hara should be returned to him."

There was no evidence introduced at the hearing nor is there any now contained in the record supporting such a finding! This case does not present a question of whether or not there is credible or conflicting evidence on this point. Your petitioner maintains and is ready to show this Honorable Court that there is no evidence in the record supporting the above finding.

Mrs. O'Hara also contended that she entered into an antenuptial contract with her husband whereby her husband agreed with her that if she would agree on a definite date of marriage, and would give up her lucrative position (which she had for twenty years and through which she earned an average of $4,000. per annum) and agree to provide for his aged parents, if they survived him, he would keep the said policies in force and through them keep Mrs. O'Hara, his wife, financially protected in the event she should survive him. In pursuance of that agreement Mrs. O'Hara did give up her position and thus her independent means of support

and assumed all the aforesaid obligations and performed her part of the agreement in all other respects. Mrs. O'Hara's performance as aforesaid is now judicially determined.

The Master refused to find an antenuptial contract as claimed by Mrs. O'Hara even though there was absolutely no evidence introduced in contradiction thereof. There is not a scintilla of evidence in the record which either denies or impeaches her evidence in the slightest degree on this point.

The District Court in affirming the finding of the Master interpreted the language and findings of the Master to mean that the alleged return of the policies by Mrs. O'Hara to her husband on September 21, 1940, was a "gift back" by Mrs. O'Hara to her husband.

The District Court does not embody an analysis nor does it contain a discussion of the evidence in its opinion. It affirms the findings of the Master *in toto*. We maintain that any attempt to deal with the evidence will produce a stone wall against the logic of the Master.

The United States Circuit Court of Appeals for the First Circuit in its review of the opinion of the said District Court and the Master's Report held

> "the sole issue is whether the appellant 'relinquished' all her rights in the two insurance policies given her by her late husband on May 2, 1939, by returning them to him on September 21, 1940 . . . "

and held that in returning the policies on September 21, 1940, Mrs. O'Hara "relinquished all her rights in the policies on the latter date". The Circuit Court does not analyze the evidence but affirms *in toto* the Master's findings. An analysis of the evidence will clearly show that the Master's conclusions *cannot* be arrived at.

The Circuit Court makes reference to Mrs. O'Hara's claim that she entered into an antenuptial contract with her hus-

band, as aforesaid, and that she was to receive financial protection through the insurance policies so long as she remained his wife. This phase of the case is entirely disregarded by the opinion of the U. S. Circuit Court for the First Circuit.

Upon examination, it is clear that there is not a scintilla of evidence in the entire record which supports the claim that Mrs. O'Hara made a "gift" of the policies to her husband, Walter E. O'Hara, on September 21, 1940. When we say there is no testimony we do not just mean to say that there isn't creditable supporting or conflicting testimony on this most important question. We firmly contend there is absolutely no legal evidence whatsoever present which in any manner affords even the slightest degree of support to the finding that Mrs. O'Hara made a "gift" of the policies to her husband on September 21, 1940. The presumption of law is also against such a gift in absence of clear, positive and direct proof.

In the case of *Stickney* vs. *Stickney*, 131 U. S. 227, the Supreme Court of the United States held:

> "... We think that whenever a husband acquires possession of the separate property of his wife, whether with or without her consent, he must be deemed to hold it in trust for her benefit in the absence of any direct evidence that she intended to make a gift of it to him. ...."

There is also absolutely no testimony in the record upon which can be predicated the Master's finding that "the policies were given up pursuant to arrangements worked out between counsel". The record upon examination will definitely prove conclusively to the contrary. The Master based his finding upon a series of inferences, and each inference is drawn from a preceding inference and none of them have any foundation in fact.

The Master, as a matter of fact, did not define the return of the policies as a gift from Mrs. O'Hara to her husband. The Master held the alleged return was a return based upon an arrangement agreed upon by the respective counsel of the parties as indicated above. The District Court of its own volition interpreted the language of the Master to mean a "gift back" from Mrs. O'Hara to her husband.

The Circuit Court in its opinion defines the alleged return of the policies on September 21st by Mrs. O'Hara to her husband as a "relinquishment" of her rights therein. The Circuit Court does not use the word "gift". It interprets the Master's language to mean a "relinquishment of the policies".

This latter interpretation of the alleged delivery of the policies on September 21st presents an entirely different basis than that adopted by the District Court or by the Master respectively. The word "relinquished" as used apparently must be taken to mean that Mrs. O'Hara gave up her rights to the policies or abandoned her ownership of them to her husband. There is no evidence anywhere in the record supporting such a basis. The record is totally void of such legal evidence to support such a conclusion.

The only testimony in the entire record bearing upon the return of the policies on September 21, is a statement of a witness, John Broadbent, who claimed that on September 21, Mrs. O'Hara delivered a sealed envelope in his presence to another witness named, Walter Kilbourne; that after Broadbent left the home of Mrs. O'Hara, he got the envelope from Mr. Kilbourne and ripped it open; that he, Broadbent, then for the first time saw the two insurance policies in the envelope and that subsequently the opened envelope containing the policies and other papers were delivered to Mr. O'Hara in Fall River. The only other supporting testimony bearing on the alleged return of the policies was that of Mr. Patrick Harrington. He was the attorney for the late Walter E.

O'Hara during his lifetime. He admitted he has a large personal claim against the Estate of Walter E. O'Hara and also that he now represents creditors against the said estate aggregating about $20,000. He was forced to admit that he has a personal interest, amounting to close to $10,000., at stake in this case and is desirous of seeing that Mrs. O'Hara loses her case. Without the insurance policies becoming part of the Estate of Walter E. O'Hara, Mr. Harrington can have no hope of any payment on his personal claim or the claims of his clients. The O'Hara Estate is insolvent even with the insurance money becoming part of the estate.

Mr. Harrington's testimony was that he saw the policies on the afternoon of September 21 in the possession of Walter E. O'Hara. The witness Broadbent admitted that the said sealed envelope was delivered into the possession of said Walter Kilbourne. Walter Kilbourne, on the other hand, flatly denied that the sealed envelope he received contained the insurance policies. Mrs. O'Hara likewise denied that she gave any policies to Mr. Kilbourne or Broadbent on September 21st. She did admit she gave Mr. Kilbourne a sealed envelope which contained other valuable papers for Mr. O'Hara on September 21st. We admit that the record contains a conflict of evidence regarding a delivery of the policies on September 21st.

It is judicially established that on Sept. 21, 1940 Walter O'Hara wrote his wife as follows:—

> "Darling . . . I love you with all my heart, and my absence from you is doing nothing short of killing me. *So you can keep the insurance* policies. *I rather that you had the proceeds than anyone else in the world.*
>
> Your loving husband
>
> Walter"

The mere delivery as found by the Master in his report and affirmed by the District Court does not in and of itself prove

the making of a gift from a wife to her husband. Much greater and stronger proof is required by law. There is no testimony except the above which offers a basis for the finding that Mrs. O'Hara made a "gift" of the policies to her husband, Walter E. O'Hara. Mrs. O'Hara admitted giving the policies to her husband on September 22nd but stated it was for the express purpose of paying off certain loans which existed on the said policies and which she provided money for. It is judicially established that Mrs. O'Hara actually did give her husband money for the sole purpose of paying off the said loans. Her husband, instead of using the policies for the express purpose for which the policies were entrusted to him, proceeded after he got possession of the policies to remove his wife as beneficiary and substituted his estate as beneficiary in her place. He never paid the loans off, and thus Mrs. O'Hara also lost the money she gave him for that purpose as the matter now stands.

We respectfully maintain the decree as entered by the U. S. Circuit Court is in violation of Article 5 of the Amendment to the Constitution of the United States.

REASON FOR GRANTING THE WRIT OF CERTIORARI

The sole question before the court is whether Mrs. O'Hara has had the said insurance policies judicially decreed as her property taken away from her in violation of Article 5 of the Amendment to the Constitution of the United States which contains the following provision:

> "No person shall be . . . deprived of life, liberty or property, without due process of law; . . . ."

We respectfully maintain that if Mrs. O'Hara's property (the said insurance policies) has been decreed the property